

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOUGLAS ALBERT,)
Plaintiff)
)
v.) C.A. No. 05-30008-MAP
)
CITY OF CHICOPEE, et al)
Defendants)

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO VACATE ORDER TO
STRIKE DEFENDANTS' EXPERT WITNESS**

Now comes the Plaintiff in connection with the above-titled matter and files his opposition to Defendants' Motion to Vacate Order to Strike Defendants' expert witness.

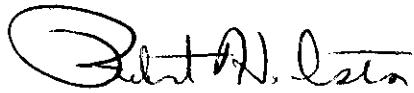
In support of this opposition plaintiff states:

1. The court originally designated February 3, 2006 as the date for experts to be designated and reports to be provided;
2. On February 3, defense counsel moved to extend the court's order, and the court ordered that "**Defendant's expert's report shall be provided by February 17, 2006. There shall be no further extensions.**" (Emphasis supplied);
3. On February 22, 2006 plaintiff's counsel received from defense counsel an envelope postmarked February 21, containing a letter naming an expert and referring to a resume, said resume which was not enclosed in the letter.

There was no written report prepared and signed by the expert witness as mandated by Rule 26 (a) (2) of the Federal Rules of Civil Procedure;

4. On February 23, 2006 plaintiff filed a Motion to Strike Defendants' Expert Witness. Defendant did not oppose the motion and said motion was allowed by the court on March 10, 2006.
5. Defendants, in a motion filed March 15, now seek relief from the court's order on the grounds that the order was entered against the Defendants through "Defendants' mistake, inadvertence, surprise or excusable neglect," the basis of which is an assertion that "the press of other legal matters for both attorneys resulted in the objection to strike Defendants' expert witness not being filed before March 10, 2006;
6. Plaintiff asserts that Defendants' Affidavit fails to support a sufficient basis for relief from the court's order;
7. Furthermore, as acknowledged in Defendants' motion, Defendants have still have not complied with Rule 26(a)(2) regarding expert witness disclosures, having provided no resume and no report to date.
8. Expert depositions in this matter were ordered to be completed by March 10, and a **final pre-trial conference is scheduled for April 7.**
9. Plaintiff submits that Defendants have had ample opportunity to comply with the requirements of Rule 26(a)(2), and that for the court to vacate its order condones a cavalier approach to court-imposed deadlines, resulting in unnecessary and unreasonable delay, and prejudice to the Plaintiff.

Respectfully Submitted
For the Plaintiff



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above
document was served upon the attorney of record for
each party by mail (by hand) on 3/21/06

